

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Date filed in Court:

-----X
HECTOR OLIVERAS,

Index No.:

Plaintiff,

Plaintiff designates
QUEENS
County as the
place of trial

-against-

The basis of the
venue is LOCATION
OF INCIDENT

THE CITY OF NEW YORK, POLICE OFFICER
JENNIFER MARTINEZ, POLICE OFFICER "JOHN
DOE",
(fictitious name, real name unknown)

SUMMONS

Defendants.

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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Brooklyn, New York
November 10, 2014

Yours, etc.

Law Offices of Sean H. Rooney
Attorney for Plaintiffs
26 Court Street, Suite 1816
Brooklyn, NY 11242
(718) 248-2168

By: 
SEAN H. ROONEY, ESQ.

Defendants' Addresses:

1) **The City of New York**
100 Church Street
New York, NY 10007

2) **Police Officer Jennifer Martinez**
Tax ID No.: 943528
c/o New York Police Department
106th Precinct
103-53 101st Street
Ozone Park, NY 11417

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X Index No.:
HECTOR OLIVERAS,

Plaintiff,

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK, POLICE OFFICER
JENNIFER MARTINEZ, POLICE OFFICER "JOHN
DOE",
(fictitious name, real name unknown)

Defendants.

-----X

Plaintiff, as and for his Complaint, by and through his attorney, the LAW OFFICE
OF SEAN H. ROONEY, complaining of the defendants, respectfully sets forth and
alleges upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. That at all the times herein alleged, and upon information and belief,
plaintiff was and still is a resident of the County of Queens, City and State of New York.
2. That the defendant THE CITY OF NEW YORK (hereinafter "CITY") was
and still is a Municipal Corporation duly organized and existing under and by virtue of
the laws of the State of New York.
3. Upon information and belief, that at all times hereinafter mentioned,
Defendant POLICE OFFICER JENNIFER MARTINEZ (hereinafter "P.O. MARTINEZ")
was and still is a resident of the State of New York.
4. Upon information and belief, that at all times hereinafter mentioned,
Defendant POLICE OFFICER "JOHN DOE" (hereinafter "OFFICER") was and still is a
resident of the State of New York.

5. That at all times hereinafter mentioned defendant P.O. MARTINEZ, was and still is an officer in the Police Department of the CITY OF NEW YORK. Suit is being brought against her individually and in her official capacity.

6. That at all times hereinafter mentioned defendant OFFICER, was and still is an officer in the Police Department of the CITY OF NEW YORK. Suit is being brought against him individually and in his official capacity.

7. That at the time of the aforesaid occurrence the defendant police officers were acting as an employee and agent of the CITY OF NEW YORK within the scope of their authority, and under color of law.

8. That on or about January 3, 2014, at approximately 3:00PM, while Plaintiff was lawfully within his residence located at 132-18 87th Street, Queens County, New York, the defendants in the scope of their employment, as police officer and in connection with an illegal and false arrest, accosted Plaintiff, physically and verbally abused/assaulted the Plaintiff, illegally and forcibly handcuffed him, unlawfully searched the plaintiff, unlawfully detained plaintiff at the aforesaid location, in a police vehicle, Central Booking, police precinct, holding cell, Rykers Island, courthouse and other locations, confined Plaintiff until his release, and otherwise harmed the Plaintiff.

9. That during the aforesaid assault, the Defendant police officers repeatedly and without justification called Plaintiff names, cursed at Plaintiff, threatened Plaintiff and verbally tormented Plaintiff.

10. That in connection with the aforementioned assault, said defendants were accompanied by another police officer, whose name is unknown to Plaintiff, who joined in the assault, false arrest and unlawful confinement of the Plaintiff.

11. That the aforesaid assault took place in a public in front of other people, many of whom knew the Plaintiff, much to Plaintiff's dismay and humiliation.

12. That the aforesaid acts were the result of brutal, wanton and malicious conduct on the part of the Defendant police officers, and at no time did Plaintiff provoke or cause any of the aforesaid conduct and in no way was the aforesaid conduct justified or reasonable.

13. That at no time did Plaintiff commit any crime, break any law, or do any wrong.

14. That solely by reason of the foregoing, the Plaintiff sustained serious and severe personal and psychological injuries.

15. That solely by reason of the foregoing, the Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A SECOND CAUSE OF ACTION

16. The Plaintiffs repeats, reiterates and re-alleges each and every allegation contained in the paragraphs of the Complaint numbered "1" through "15" as if fully set forth herein at length.

17. That at the time and place aforesaid, the Defendant police officers, while acting within the scope of their employment by the Defendant CITY, were negligent and grossly negligent and careless in taking custody the Plaintiff.

18. That such negligence and gross negligence consisted of, among other things, that they failed to properly investigate the situation; failed to ascertain the truth of the situation, which could have been ascertained upon reasonable inquiry; failed to discuss the situation with witnesses that were available; took drastic action on an

unsubstantiated charge without any further verification or insufficient verification when the situation was not an emergency situation; misjudged and over judged the amount of force necessary to take into custody the Plaintiff; failed to take proper precautions to prevent unnecessary and severe physical and psychological injury to the Plaintiff while taking Plaintiff into their custody; failed to exercise the proper care and caution in taking the Plaintiff into custody; failed to adequately supervise its employs pertaining to proper use of force when taking persons into custody; and was otherwise careless and negligent.

19. That the injuries aforesaid were due to the negligence and gross negligence of the Defendants and the Plaintiff having in no way contributed thereto.

20. That as a result of the aforesaid, Plaintiff suffered severe personal and psychological injuries herein above alleged.

21. That solely by reason of the foregoing, the Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A THIRD CAUSE OF ACTION

22. The Plaintiff repeats, reiterates and re-alleges each and every allegation contained in the paragraphs of the Complaint numbered "1" through "21" as if fully set forth herein at length.

23. That on January 3, 2014, the Plaintiff was falsely arrested without a warrant by the Defendant police officers acting on behalf of the Defendant CITY.

24. That at the aforesaid time and place, and in connection with the aforesaid arrest, the Defendant police officers handcuffed and detained the Plaintiff in a public

place, on the street, police vehicle, Central booking, police precinct, holding cell, Rykers Island, courthouse, and other locations.

25. That the aforesaid arrest was a false arrest, in that it was without probable cause, without warrant and without just cause or justification.

26. That the aforesaid detention constituted an unlawful detention in that it resulted from an illegal and unlawful arrest with the Defendants having no cause, justification or right to detain the Plaintiff in their custody.

27. That said arrest was false, groundless and illegal in that Plaintiff committed no crime, broke no law and did no wrong, and there was no probable cause or just cause to believe he had.

28. That the Plaintiff arrest received wide notoriety in his home community in which the arrest occurred, in front of all his friends and acquaintances and in a loud, rambunctious and notorious manner as to attract the attention of all those around.

29. That solely as a result of this false arrest and false imprisonment, the Plaintiff's health was impaired, plaintiff suffered great mental distress, irreparable damage to his reputation and character, his earning power was permanently impaired, his record was permanently marred with the false and groundless notation that he was arrested, incurred substantial mental anguish, incurred substantial and permanent psychological disturbance and embarrassment as well as suffered all the injuries as previously alleged herein.

30. That solely by reason of the foregoing, the Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A FOURTH CAUSE OF ACTION

31. The Plaintiff repeats, reiterates and re-alleges each and every allegation contained in the paragraphs of the Complaint numbered "1" through "30" as if fully set forth herein at length.

32. That on January 3, 2014, the Defendants in connection with the aforesaid illegal detention and arrest of the Plaintiff, did intentionally, maliciously, and wantonly torment the Plaintiff by threatening him, calling him names, cursing at him, and abusing him, all in front of his friends, neighbors and acquaintances in a public place for no reason.

33. That the aforesaid acts were a result of brutal, outrageous and malicious conduct on the part of the Defendant police officer and at no time did the Plaintiff provoke or cause any of the aforesaid conduct, and in no way was the aforesaid conduct justified or reasonable.

34. That as a result of the aforesaid, the Plaintiff suffered personal injuries as hereto before alleged, in addition to great mental distress, severe mental anguish, extreme humiliation, permanent psychological disturbance, embarrassment, intense fear, suffered great pain and distress and was otherwise injured.

35. That solely by reason of the foregoing, the Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A FIFTH CAUSE OF ACTION

36. The Plaintiff repeats, reiterates and re-alleges each and every allegation contained in the paragraphs of the Complaint numbered "1" through "35" as if fully set forth herein at length.

37. That the aforementioned acts are the result of an actual and defacto policy of the CITY as implemented by its officials, police commissioners and police departments.

38. That the aforesaid occurrences constitute a deprivation of Plaintiff's civil right under Federal Law specifically § 42 U.S.C. Section 1981, 1983, 1998 and the FIRST, FOURTH, FIFTH AND FOURTEENTH AMENDMENTS of the United States Constitution.

39. That the Defendants and their agents and employees have been conferred with "Police Officer Status" and as such, were acting under "Color of Law" and "Color of their Authority as Peace Officers" in effecting the unlawful entry/search, assault, battery and imprisonment of Plaintiff.

40. That the aforesaid actions constitute an unlawful search, unlawful entry, unlawful arrest, unlawful detention, excessive use of force and physical brutality, all in violation of the FIRST, FOURTH, FIFTH and FOURTEENTH AMENDMENTS of the United States Constitution, as well as 42 U.S.C. Section 1981, 1983 and 1988.

41. That solely as a result of the aforesaid violation of Plaintiff's right under the aforesaid Federal Statutes, the Plaintiff was caused to suffer the injuries that are hereto before alleged, as well as general damages for the violation and deprivation of his liberty, invasion of privacy, and other deprivation of Civil Rights, as well as attorneys fees as provided by said statutes.

42. That solely by reason of the foregoing, the Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A SIXTH CAUSE OF ACTION
MALICIOUS PROSECUTION

43. That Plaintiff repeats, reiterates and re-alleges each and every allegation contained in the paragraphs of the Complaint numbered "1" through "42" as if fully set forth herein at length.

44. That in connection with the false arrest and imprisonment, the defendants initiated a prosecution against the plaintiff, without probable cause to believe that such proceeding could succeed.

45. That defendants initiated such prosecution with malice, and that said prosecution terminated in favor of the plaintiff.

46. That solely by reason of the foregoing, the Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A SEVENTH CAUSE OF ACTION
FOR PUNITIVE DAMAGES

47. That Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the paragraphs of the Complaint numbered "1" through "46" as if fully set forth herein at length.

48. That the aforesaid acts by the Defendants were the result of willful, wanton, outrageous, malicious, illegal, brutal and unconscionable intentions and actions without cause or justification.

49. That as a result of this wanton conduct and gross negligence, Plaintiff is entitled to recover punitive damages.

50. That solely by reason thereof, Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower Courts.

51. That heretofor, the Plaintiff caused to be served upon the comptroller of the Defendant CITY a Notice of Claim, pursuant to Section 50-e of the General Municipal Law, and more than 30 days have elapsed and the claim was not settled or adjusted. Said notice was served within 90 days of the occurrence complained of, and this action was commenced within one year and 90 days from the date of said occurrence.

AS AND FOR A EIGHTH CAUSE OF ACTION
NEGLIGENT HIRING/RETENTION

52. That Plaintiffs repeat, reiterate and re-allege each and every allegation contained in the paragraphs of the Complaint numbered "1" through "51" as if fully set forth herein at length.

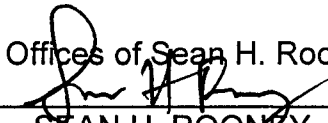
53. That Defendants failed to exercise reasonable care in selecting, hiring, retaining and training its employees. At the time defendants hired, retained and trained said employee/police officers, defendants knew or should have reasonably known that said officers would violate the rights of members of the general public and as a direct and proximate result, would cause injuries as alleged herein.

54. As a direct and proximate result of Defendant's negligent selection, hiring, retention and training, plaintiff has suffered and continues to suffer injuries entitling plaintiff to damages in an amount which exceeds the jurisdictional limits of all lower Courts.

WHEREFORE, the Plaintiff demands Judgment against the Defendants on the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in an amount which is in excess of the jurisdictional limit of all lower courts that would

otherwise have jurisdiction in this matter, together with the costs and disbursements of this action.

Dated: Brooklyn, New York
November 10, 2014

Law Offices of Sean H. Rooney
By: 
SEAN H. ROONEY, ESQ.
Attorneys for Plaintiff

VERIFICATION

STATE OF NEW YORK)
COUNTY OF Kings) s.s.:

I, the undersigned, being duly sworn, depose and say: I am the Plaintiff

in the action; I have read the foregoing *Summons and Complaint*.

And know the contents thereof; the same is true to my own knowledge, except as to the matters therein state to be alleged on information and belief, and as to those matters I believe it to be true.



Sworn to before me on this
10 day of *November*, 2013


NOTARY PUBLIC

SEAN H. ROONEY
Notary Public - State of New York
No. 02RO5067378
Qualified in Queens County
Commission Expires *10/16/16*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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HECTOR OLIVERAS,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
JENNIFER MARTINEZ, POLICE OFFICER "JOHN
DOE",
(fictitious name, real name unknown)

Defendant.

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SUMMONS AND COMPLAINT

LAW OFFICE OF SEAN H. ROONEY
Attorneys for Plaintiff
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(718) 243-2168